IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7584 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKKAR JAGIVAN BHAGWANJI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner(s) : 1,
MS ARCHANA RAVAL AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/11/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Secretary, Food and Civil Supply, State of Gujarat dtd.28/7/1995 in Appeal No.454 of 1993 in dismissing the same and confirming the order passed by the Deputy Collector, Gondal dtd.30/6/1993 in confiscating the good worth Rs.1,02,884=00 under the provisions of the Gujarat Essential Articles (Licensing,Control and Stock Declaration) Act, 1981 (hereinafter referred to as “the Act” for convenience).

2. The petitioner was having a license to run the fair price shop at Village Gondal, Taluka Gondal under the provisions of Act and there was inspection carried out by the Mamlatdar, Gondal

on 27/2/1993 and it was found that the license which was valid up to 31/12/1991 has not been renewed after 31/12/1991, no Stock Register is kept at the place of the business and no Stock Register is produced, Board mentioning the price and other particulars as regards stock etc. has not been maintained, the particulars / statements which were required to be sent to the licensing authority are not produced. For the aforesaid allegations / irregularities and mal-practices, the petitioner was served with a Show Cause Notice asking him as to why the stock ceased should not be confiscated on the ground that there is a breach of Licensing Order. The petitioner replied the said Show Cause Notice pointing out inter-alia that at the relevant time the stock of food grain, pulse and sugar kept by the petitioner was below the permissible limits for getting license and therefore, the petitioner was not required to obtain the license and therefore, the license in question was not got

renewed by the petitioner. It was also submitted by the petitioner with regard to maintenance of Stock Register that prior to two days of the surprise visit i.e. on 25/2/1993, there was Cyclone and the petitioner had proceeded to his house along with Stock Register. However, when the petitioner reached his home, it was found that the said register is lost and before the petitioner could give any advertisement in the news paper with regard to missing of the said register, the petitioner got information that there is a surprise checking on 27/2/1993 and therefore, the petitioner could not produce the Stock Register. So far as not keeping the Board mentioning the price and particulars of stocks etc., he was maintaining the same but the writing of the Board which were written by Choke, were erased due to touching of the hands of the customers and therefore, it is submitted that the petitioner has not committed any mal-practice. With regard to sending the Monthly Statement to

the Mamlatdar, it was submitted by the petitioner that the petitioner is maintaining the same and sending it to the Mamlatdar but due to Cyclone, as stated above, he was not in a position to produce the same. Considering the reply to the show cause notice submitted by the reply and not accepting any of the submissions and after giving an opportunity to the petitioner, the Deputy Collector, Gondal passed the order confiscating the entire stock which was seized worth Rs.1,02,884=00. Being aggrieved and dissatisfied with the said order, the petitioner preferred an appeal before the State Government being Appeal No.454 of 1993 and the Dy.Secretary, Food and Civil Supply, State of Gujarat vide judgement and order dtd.28/7/1995 dismissed the said appeal. Being aggrieved by and dissatisfied with the aforesaid two orders, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. Mr.Mankad learned advocate appearing on behalf of Mr.Yogesh Lakhani, learned advocate appearing for the petitioner has vehemently submitted that both the authorities below have materially erred in passing the order of confiscation of stock seized worth Rs.1,02,884=00. He has also further submitted that as such, there is no mal practice committed by the petitioner and/or action of the petitioner is not in breach of the conditions of the license. It is also further submitted that the explanation submitted by the petitioner has not been properly considered by both the authorities below. He has also further submitted that the alleged breaches are technical in nature and in view of the Circular issued by the Secretary, Food and Civil Supply Department, dtd.11/11/1987, the confiscation of the stock seized was not permissible. He has also further submitted that at the relevant time i.e. the day on which there was surprise visit, the petitioner was having

stock of food grains, pulse and sugar less then permissible limits for the purpose of having license and therefore, the petitioner was not required to get license and therefore, the license was not renewed. He has also further submitted that for the purpose of food-grain, if the stock of pulse is more than 10 KV and if the stock of sugar is more than 10 KV then and then only the license is required and therefore, considering the fact that at the relevant time the stock of the good grain, pulse and sugar was less then the aforesaid quantity, the petitioner was not required to have the license and therefore, the same was not got renewed. So far as the other allegations are concerned, it is submitted that the petitioner has given satisfactory explanation and as stated above, the same are of technical in nature. Consequently it is requested to allow the present petition.

4. Per contra, Ms.Archana Raval, learned AGP

while opposing the present petition has submitted that both the authorities below have concurrently found and held that the petitioner has committed breach of the license which are of substantial in nature and are not technical in nature as alleged. She has also further submitted that the explanation given by the the petitioner has been considered and dealt with by both the authorities below and the same has not accepted by both the authorities below. She has also further submitted that the contention on behalf of the petitioner that as on the date of surprise checking, the petitioner was having less quantity of food grain, pulse and sugar than the prescribed limits for getting license, cannot be accepted, as according to her the same is not depending and/or fluctuating one. It is also further submitted that no plausible explanation has been submitted by the petitioner for not maintaining register and not producing the stock register and monthly statements and the

explanation given by the petitioner cannot be accepted, as no sufficient proof has been given with regard to the alleged cyclone dtd.25/2/1993 and even the explanation which is given by the petitioner is that the Board Mentioning the particulars of the stock etc. is also cannot be accepted. Consequently, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the parties. Considering the evidence on record and having heard the learned advocates, it is admitted position that the petitioner was having license bearing No.334 under the provisions of the Act. The Controlled Order of 1981 which was valid up to 31/12/1991. It is also an admitted position that the same was not got renewed by the petitioner thereafter and the petitioner was running the Fair Price Shop. It is also required to be noted that the contention of the petitioner after the surprise visit and after

it was found that the petitioner has not got license renewed was that as the petitioner was not keeping that much quantity of food grain, pulse and sugar, which was required for the purpose of having license and therefore, the same was not got renewed. It is the contention on behalf of the petitioner that at the relevant time, the stock which was found of less quantity then what was required for having license and therefore,the license was not got renewed, cannot be accepted. It is required to be noted that the availability of the stock on the date of inspection or on a particular date cannot be considered for the purpose of requirement of license. The stock may vary from day-to-day and therefore, if the contention of the petitioner is accepted than on a particular day when the stock is more than the required quantity, the license would have been required and the day on which the stock is less then the required quantity on that day the license is not required to be

obtained. Such a situation cannot be even visualised. Under the circumstances, such contention cannot be accepted. To run a Fair Price Shop without getting license renewed is a serious misconduct and mal-practice.

6. So far as the other irregularities / breaches regarding maintaining the stock register and not submitting the monthly register to the competent authority are concerned, as such the same cannot be said to be technical breaches. Not to maintain stock is a serious misconduct / breach. The explanation given by the petitioner that there was cyclone on 25/2/1993 and when the petitioner was going to his house, he lost the stock register and monthly statement, is rightly not accepted by both the authorities below, as no proof was submitted by the petitioner. So far as the allegation with regard to not having Board mentioning the particulars of stock etc., the learned advocate appearing on

behalf of the petitioner has not disputed the same, as he himself is not satisfied with the explanation given by the petitioner to the show cause notice. Considering the aforesaid facts and circumstances, the contention raised by the learned advocate appearing on behalf of the petitioner that the breaches which are alleged are of technical nature and therefore, as per Circular dtd.11/11/1987, stock which was seized are not required to be confiscated, cannot be accepted, as the alleged breaches are not technical in nature.

7. Over and above, there is concurrent finding of fact arrived at by both the authorities below which are not required to be interfered with in the present petition under Articles 226 and 227 of the Constitution of India.

8. For the reasons stated hereinabove, there

is no substance in the petition. The present petition is required to be dismissed and the same is accordingly dismissed. Interim relief granted earlier is stands vacated forthwith. However, there will be no order as to costs.

(M.R. SHAH,J.)

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